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June 18, 2008

**FILED ELECTRONICALLY/
HAND DELIVERED TO CHAMBERS**

The Honorable Maxine M. Chesney
United States District Judge
United States District Court for the
Northern District of California
450 Golden Gate Avenue
San Francisco, California 94102

re: ASUSTek Computer, Inc., ASUS Computer International, Plaintiffs/Counter-
Defendants v. International Business Machines Corporation, Defendant/Counter-
Plaintiff
Case No. C08-CV-1168-MMC

Dear Judge Chesney:

I write on behalf of Defendant/Counterclaim-Plaintiff IBM in submitting a counter-proposed Scheduling Order for your Honor's consideration.

Following the June 6, 2008 Case Management Conference, the parties attempted to reach agreement on an amended pre-trial schedule which reflects the Court's comments concerning the parties' different schedules set forth in the Joint Case Management Statement and Proposed Order ("CMS") submitted May 31, 2008. Unfortunately, the parties could not agree on an amended schedule and seem to have different impressions of the Court's directions given at the June 6 conference.

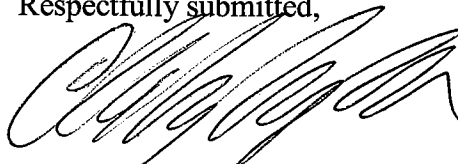
As reflected in IBM's proposed schedule, IBM believes the Court asked that the new schedule would be based on plaintiffs' originally proposed schedule in the CMS, but suggested that the schedule be shortened to set trial in Summer 2010 by reducing some of the time intervals set out in the original proposed schedule. For example, we believe the Court indicated that, for scheduling purposes, the date for issuing the Claim Construction Ruling (item o.) could be set for 30 days after the Claim Construction Hearing (item n.); and the interval between the willfulness/counsel-opinion deadline (item s.) and the designation of experts (item t.) could also be shortened.

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June 18, 2008

IBM's proposed schedule tracks plaintiffs' original schedule through the claim construction hearing (item n.), but also reflects the foregoing two shortened time intervals (as well as a very small contraction of the deadline for completing fact discovery (item u.) and the time intervals between completing expert discovery (item x.) and filing dispositive motions (item y.) and between the dispositive-motion hearing (item z.) and the Joint Pre-trial Conference Statement (item aa.)). As a result, IBM's proposed schedule sets a target date for trial of July 5, 2010, whereas plaintiffs' proposed trial date is October 5, 2010 – only two months earlier than their originally proposed trial date.

We regret any added burden that consideration of IBM's counter-proposed schedule might place on the Court. However, we would be willing to participate in a brief conference call to discuss the parties' different schedules if it would help the Court resolve the schedule.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Chris Hughes', with a stylized, flowing script.

Christopher A. Hughes

cc: counsel of record

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
(SAN FRANCISCO DIVISION)

ASUSTEK COMPUTER, INC., ASUS
COMPUTER INTERNATIONAL,

Plaintiffs/Counter-Defendants,

v.

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Defendant/Counter-Plaintiff.

Case No. C08-CV-1168-MMC

**[IBM COUNTER-PROPOSED]
AMENDED SCHEDULE AND PROPOSED
ORDER**

In accordance with the Court's directive on June 6, 2008, Defendant/Counter-Plaintiff
INTERNATIONAL BUSINESS MACHINES CORPORATION ("IBM") submits its counter-

1 proposed Amended Schedule and Proposed Order and requests that the Court adopt it as the
 2 Scheduling Order for this case. Although Plaintiffs/Counterclaim-Defendants ASUSTeK
 3 Computer, Inc. and ASUS Computer International considered this counter-proposed Amended
 4 Schedule and Proposed Order, they did not accept it. Therefore, IBM is submitting this Amended
 5 Schedule and Proposed Order separately because it believes it comports with the Court's
 6 suggestions made at Case Management Conference on June 6, 2008.

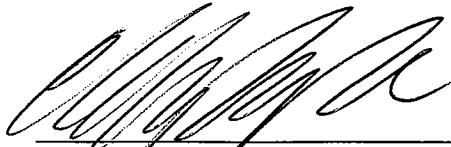
- | | | |
|----|--|-----------------------------|
| 8 | a. Case Management Conference | Jun. 6, 2008
10:30 a.m. |
| 10 | b. Disclosure of Asserted Claims and Preliminary Infringement
Contentions | Jun. 20, 2008 |
| 12 | c. Preliminary Invalidity Contentions | Aug. 4, 2008 |
| 13 | d. Designate Claim Construction Experts | Jan. 28, 2009 |
| 14 | e. Exchange of Proposed Terms and Claim
Elements for Construction | Jan. 28, 2009 |
| 16 | f. Exchange of Preliminary Claim
Constructions and Extrinsic Evidence | Feb. 17, 2009 |
| 17 | g. Status Conference | Feb. 27, 2009
10:30 a.m. |
| 19 | h. Joint Claim Construction and
Pre-hearing Statement | Mar. 16, 2009 |
| 21 | i. Completion of Claim Construction Discovery | Apr. 15, 2009 |
| 22 | j. Plaintiffs' Opening Claim Construction Briefs | Apr. 30, 2009 |
| 23 | k. Defendant's Responsive Claim Construction Briefs | May 14, 2009 |
| 24 | l. Plaintiffs' Reply Claim Construction Brief | May 25, 2009 |
| 25 | m. Claim Construction Pre-hearing Conference | Jun. 9, 2009 |
| 26 | n. Claim Construction Hearing | Jun. 12, 2009 |

- 1 o. Claim Construction Ruling (Estimated to allow for
2 subsequent dates to be provided) July 13, 2009
- 3 p. Last Day to Amend Pleadings Aug. 14, 2009
- 4 q. Final Infringement Contentions Aug. 14, 2009
- 5 r. Final Invalidity, Contentions Sept. 2, 2009
- 6 s. Opinion of Counsel as Defense to Willfulness Sept. 2, 2009
- 7 t. Designate Technical Experts Oct. 1, 2009
- 8 u. Deadline to Complete Fact Discovery Oct. 30, 2009
- 9 v. Deadline for party with the burden of proof to submit expert
10 reports Nov. 20, 2009
- 11 w. Deadline for parties to submit responsive expert reports Dec. 18, 2009
- 12 x. Deadline to complete expert discovery Jan. 15, 2010
- 13 y. Deadline for parties to file dispositive motions Feb. 1, 2010
- 14 z. Hearing on Final Dispositive and *Daubert* Motions March 5, 2010
- 15
- 16 aa. Joint Pretrial Conference Statement and Proposed Order May 5, 2010
- 17
- 18
- 19 bb. File Motions in Limine May 5, 2010
- 20
- 21 cc. Provide Copies of Exhibits to Other Parties and Stipulation re
22 Admissibility of Exhibits for presentation at Pretrial
23 Conference May 5, 2010
- 24 dd. File Joint Set of Agreed Upon Jury Instructions and
25 Individual Sets of Instructions not agreed upon and
26 Objections May 5, 2010
- 27
- 28

- 1 ee. File Joint Preliminary Statement and/or Preliminary May 14, 2010
2 Instructions (for the jury)
- 3
- 4 ff. File Opposition to Motions in Limine May 14, 2010
- 5
- 6 gg. File List of Exhibits with Stipulations and Objections May 20, 2010
- 7
- 8
- 9 hh. File list of Objections to Other May 20, 2010
10 Evidence
- 11 ii. File Proposed Jury Voir Dire and Proposed Form of Verdict May 20, 2010
- 12
- 13
- 14 jj. Pretrial Conference May 21, 2010
- 15
- 16 kk. Pretrial Disclosures June 1, 2010
- 17 ll. Objections to Pretrial Disclosures June 18, 2010
- 18
- 19 mn Provide Exhibits to Court July 5, 2010
- 20
- 21 nn. Trial July 5, 2010
- 22
- 23

24 IBM reserves their right to request that the schedule be amended due to changes occurring in the
25 course of the case.

1 Dated: June 18, 2008



2 Attorney for International Business Machines
3 Corporation

4
5
6 **AMENDED SCHEDULING ORDER**

7 The Amended Schedule and Proposed Order is hereby adopted by the Court as the
8 Scheduling Order for the case and the parties are ordered to comply with this Order.

9 Dated: _____

10 _____
11 The Honorable Maxine M. Chesney
12 United States District Judge